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BOOK REVIEWS.

A TREATISE ON THE LAW OF MUNICIPAL CORPORATIONS. By HOWARD S. ABBOTT. St. Paul: Keefe-Davidson Company. 1905-1906. Three volumes, pp. xix, xvi, xvi, 3045.

The field of the law of municipal corporations is so extensive that a writer of a comprehensive treatise on this subject is under the temptation, if not the necessity, to discuss with reasonable fullness many parts of the law to which attention is given in other treatises more monographic in their nature. The law of municipal corporations is the law governing the legal relations of a certain class of persons rather than the law governing a certain class of legal relations. A treatise on the law of municipal corporations is therefore of necessity rather encyclopædic than monographic in its nature.

This is the character of the book before us. It treats quite fully of the law of taxation, of the law of officers, of the police power, and of the law of eminent domain, in addition to giving attention to subjects which relate particularly to municipal corporations. While this fact will probably deter the student of this branch of the law from attempting anything in the nature of a thorough perusal of the work, it rather adds to than detracts from its value for the purpose for which it was evidently written, *viz.*, as a help to the legal practitioner.

The very size of the book makes it impossible in the space at command to enter into any minute criticism. Our attention can be directed merely to the general features of the work. Regarding the work from this point of view, it must be said that it is a most valuable one and one the need of which has been felt for some time. Dillon's great work, which at the time of its publication so fully occupied the field that few, if any, serious attempts to rival it have been made, has not been re-edited for so long that many of the newer phases of the law of municipal corporations have not in recent years received satisfactory treatment, if they have received any treatment at all. For this reason a work referring to the newer as well as the older cases is most welcome.

Further, the exhaustive character of Mr. Abbott's work is noticeable not merely in the number of subjects covered but also in the method of treatment. In the very numerous and voluminous footnotes appended to the text, the cases are commonly arranged in the alphabetical order of the states in which they were decided, while references are frequently made, not merely to the state reports and the national reporter system, but as well to such collections as the American State Reports and the Lawyers Reports Annotated.

Finally, the notes contain in addition to citations of cases, references to statutes and constitutional provisions which are in many instances abbreviated statements of the law, also arranged in the alphabetical order of the states from which they come. The book is thus a monument of

patient industry, and as a reference book cannot fail to find a place on the shelves of every lawyer whose practice has to do with municipal corporations.

When, however, we leave the mere form and arrangement and consider the substance of the work our praise must be in some measure qualified. In the first place, Mr. Abbott, particularly in his treatment of such subjects as the police power, the taxing power, and the power of eminent domain, continually loses sight of the fact that he is dealing with a subordinate agent of the state instead of with the state itself, and as continually informs his reader that the state may constitutionally do this thing and that thing and the other thing. Of course it is important to know what the state may or may not do, since what the state may not do one of its municipal corporations may not do. But what the student of the law of municipal corporations has a reasonable right to demand and what he does not always get from Mr. Abbott, is what the municipal corporation may do. Indeed, as a result of this failure to distinguish between the powers of the state and those of its municipal corporations, the reader is apt to obtain a false impression of the extent of municipal powers, and to regard them as larger than they really are. An instance of such misleading statements is to be found on page 218, where it is said that "boards of health have the power to order the vaccination of all persons not having been successfully vaccinated within a certain time prior to such order during the continuance of an epidemic of small-pox" and *Morris v. Columbus*, 102 Ga. 792 is cited as his first case in support of this proposition. Now what this case decided was that a statute, authorizing the city to provide for compulsory vaccination, was constitutional.

Indeed one of the most marked defects of the book is a carelessness in the making of general statements as to the law. Thus on page 681 it is said: "It is generally held that for purely local and municipal purposes the legislature cannot require a subordinate corporation to levy taxes." In support of this proposition Mr. Abbott cites the *Chicago Park Case* 51 Ill. 17 which was decided because of a constitutional provision forbidding the legislature to levy taxes for corporate purposes. Other cases cited are from Michigan which, as every student of the law of municipal corporations knows, has a rule peculiar or almost peculiar to itself on the subject of the constitutional right to local self government.

Another instance of this tendency to general and inaccurate statement is found on page 724, where it is said that the Federal courts have the right to compel by mandamus the levy of taxes by corporate powers. It is true they have, but only to enforce a judgment obtained in these courts against the corporation. The statement made by Mr. Abbott, when taken in the connection in which we find it, gives the impression that the Federal courts have the same right of control over the exercise of the power of taxation by municipal corporations as the state courts have. This, of course, is not the case.

Finally, Mr. Abbott is himself such an ardent believer in the right of municipal corporations to local self government, and the inexpediency of anything in the nature of municipal ownership that he hardly states the law fairly on these subjects. He is apt to regard the legislature, even

in the absence of specific limitations in the constitution, as more limited in its dealings with municipal corporations than it really is, and states with altogether too much positiveness the rule that municipal corporations may not without legislative authorization engage in such undertakings as municipal lighting. This is a part of the law which as yet is by no means settled, but the courts would seem—an impression which one does not get from reading Mr. Abbott's book—to be gradually adopting a somewhat more liberal view as to municipal powers. Indeed whenever Mr. Abbott makes an excursion into the field of political science he leaves the impression of one who has read little written since the early part of the nineteenth century. Wayland, Paley and De Toqueville, whom he cites, are hardly to be regarded as the exponents of the best political thought of the present day. His concrete plea on page 1480 for more elective offices in our system is one that does not appeal to the modern student of municipal government.

But after all Mr. Abbott is to be judged as a lawyer rather than as a political scientist. In this capacity he has done much to lighten the labors of his co-students, and, apart from the defects to which attention has been called, has written a book which cannot fail to be most useful.

A TREATISE ON EQUITABLE REMEDIES. By J. N. POMEROY, JR. San Francisco: Bancroft, Whitney Co. 1905. pp. Vol. I, xxx, 952; Vol. II, xix, 953-1857.

In reviewing a book it seems but fair that the author's viewpoint should, if possible, be included among those from which the reviewer regards the work. But in the present case the reviewer finds this viewpoint all but undeterminable by reason of the somewhat conflicting statements of the author. In one place the preface declares that the books are put forth as a carrying out of his father's design to add one or more volumes on equitable remedies to the great work, Pomeroy's "Equity Jurisprudence." This calls for a rather high standard of excellence if the present volumes are to justify their production. But another prefatory sentence declares "that no pretension is made to those high qualities, both of style and original thought, which have given to my father's book its important place in our legal literature"; while the opening sentence of the preface asserts that: "The present treatise is an outgrowth of a desire to annotate the brief Part Fourth of Pomeroy's Equity Jurisprudence in a way that should secure to the important topics therein contained a treatment as ample as is accorded, in that work, to other parts of Equity." The author thus furnishes two standards (perhaps inconsistent) and, that the review may be fair, both will be considered.

If the books are to be regarded from the latter viewpoint—an annotated edition of the parent text—a short and complete criticism is that they are no such thing. About half the work might, by a stretch of the word *annotated*, be so classed, but the other half professes to be made up almost wholly of new material. In the annotated half of the treatise there is the following comparative paging between the parent text and the present one: Interpleader, 18 pages in the parent text and 27 pages in the present work; Reformation and Cancellation of Instruments, 7 pages and 30 pages respectively; Partition of Land, etc., 13 and 51;